

LITTLER MENDELSON

A Professional Corporation

Attorneys for Defendant

St. James Associates, L.P. d/b/a Smith & Wollensky

885 Third Avenue, 16th Floor

New York, NY 10022.4834

212.583.9600

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOTEL EMPLOYEES and RESTAURANT
EMPLOYEES INTERNATIONAL UNION
WELFARE FUND, HOTEL EMPLOYEES and
RESTAURANT EMPLOYEES INTERNATIONAL
UNION PENSION FUND, and H. W. WARD as
Fiduciary of HOTEL EMPLOYEES and
RESTAURANT EMPLOYEES INTERNATIONAL
UNION PENSION FUND and HOTEL
EMPLOYEES and RESTAURANT EMPLOYEES
INTERNATIONAL UNION WELFARE FUND,

Civil Action No. 07-CV-0710

ANSWER

Plaintiffs,

Electronically Filed

-against-

ST. JAMES ASSOCIATES, L.P. d/b/a SMITH &
WOLLENSKY,

Defendant.

Defendant St. James Associates, L.P. d/b/a Smith & Wollensky (hereinafter
“Smith & Wollensky” or “Defendant”), by its attorneys, Littler Mendelson, P.C., for their Answer
to the Complaint, state as follows:

1. The allegations in paragraph 1 of the Complaint are legal conclusions the
validity of which Defendant is not required to admit or deny, but to the extent that a response is
required, Defendant denies them.

2. The allegations in paragraph 2 of the Complaint are legal conclusions the
validity of which Defendant is not required to admit or deny, but to the extent that a response is

required, Defendant denies them.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. Admits the allegations in paragraph 6 of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint.

8. Defendant admits that it has entered into a collective bargaining agreement with UNITE HERE Local 100 and respectfully refers to that agreement for a correct statement of its terms. The allegation that Defendant is an employer engaged in an industry affecting commerce is a legal conclusions the validity of which Defendant is not required to admit or deny. Defendant denies the remaining allegations in paragraph 8 of the Complaint.

9. Defendant admits that it has entered into a collective bargaining agreement with UNITE HERE Local 100 and respectfully refers to that agreement for a correct statement of its terms. Defendant denies the remaining allegations in paragraph 9 of the Complaint.

10. Defendant admits that it has entered into a collective bargaining agreement with UNITE HERE Local 100 and respectfully refers to that agreement for a correct statement of its terms. Defendant denies the remaining allegations in paragraph 10 of the Complaint.

11. Defendant admits that it has entered into a collective bargaining agreement with UNITE HERE Local 100 and respectfully refers to that agreement for a correct statement of its terms. Defendant denies the remaining allegations in paragraph 11 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint.

14. With regard to paragraph 14 of the Complaint, Defendant repeats and realleges its responses to paragraphs 1-13 of the Complaint as if each were fully set forth herein.

15. Denies the allegations in paragraph 15 of the Complaint.

16. There is no paragraph number 16 in the Complaint.

17. Denies the allegations in paragraph 17 of the Complaint.

18. Denies the allegations in paragraph 18 of the Complaint.

19. Denies the allegations in paragraph 19 of the Complaint.

20. Denies that Plaintiffs are entitled to any of the relief requested in paragraphs (a) and (b) in the unnumbered "WHEREFORE" paragraph on page 5 of the Complaint.

AS FOR A FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

AS FOR A SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the provisions of the collective bargaining agreement in question do not satisfy the requirements of 29 U.S.C. § 186(c)(5).

AS FOR A THIRD DEFENSE

Plaintiffs are estopped by reason of their conduct, acts, or omissions, from recovering against Defendants on any purported claims for relief contained in the Complaint.

AS FOR A FOURTH DEFENSE

Plaintiffs failed to exhaust their contractual and/or other appropriate remedies prior to filing this Complaint.

AS FOR A FIFTH DEFENSE

Plaintiffs' claims are precluded by the doctrine of unclean hands.

AS FOR A SIXTH DEFENSE

Plaintiffs' claims are barred by their failure to satisfy all requisite conditions precedent to their alleged entitlement to a recovery of a payment of benefits under the terms of the collective bargaining agreement.

AS FOR A SEVENTH DEFENSE

Defendant has complied with the terms of any applicable agreement.

AS FOR AN EIGHTH DEFENSE

Plaintiffs' claims or the relief they seek are barred under the doctrines of waiver, estoppel and laches.

AS FOR A NINTH DEFENSE

Plaintiffs' claims are barred by the doctrine of unjust enrichment.

AS FOR A TENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

AS FOR ADDITIONAL DEFENSES

Defendant reserves the right to assert additional defenses based upon information obtained during discovery.

Date: May 8, 2007
New York, New York

/S/

A. Michael Weber (AMW-8760)
Orit Goldring (OG-1023)
LITTLER MENDELSON
A Professional Corporation
885 Third Avenue, 16th Floor
New York, NY 10022.4834
212.583.9600

Attorneys for Defendant
St. James Associates, L.P. d/b/a Smith &
Wollensky